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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MCI Telecommunications Corporation Petition for Rulemaking -- Billing and Collection Services Provided By Local Exchange Carriers for Non-Subscribed Interexchange Services, RM 9108

Dear Mr. Caton:

Pursuant to the Commission's June 25, 1997 Public Notice in the above-referenced matter, enclosed for filing are an original and four (4) copies of the Joint Comments of OAN Services, Inc., and Integretel, Incorporated.

Please date-stamp the enclosed extra copy of the Joint Comments and return it to the undersigned via our messenger. If you should have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

Michael R. Romano

C. Joël Van Over
Michael R. Romano

Counsel for OAN Services, Inc.,
and Integretel, Incorporated

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
MCI Telecommunications Corporation	)	RM 9108
	)	
Billing and Collection Services Provided	)	
By Local Exchange Carriers for Non-Subscribed	)	
Interexchange Services	)	
	)	

JOINT COMMENTS OF
OAN SERVICES, INC. AND INTEGRETEL, INCORPORATED

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Dated: July 25, 1997

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The Joint Comments of OAN Services, Inc. and Integretel, Incorporated (collectively the "Joint Commenters") may be summarized as follows:

Commission Jurisdiction Over Discriminatory Access to Billing and Collection Functions: Notwithstanding the Commission's 1986 decision to detariff and deregulate billing and collection services provided by LECs, the Joint Commenters note that the Commission has acted on several subsequent occasions to exercise jurisdiction over LEC provision of billing and collection functions. Given the changes in competitive conditions and recent efforts by LECs to leverage their power over billing and collection functions in negotiations with clearinghouses and IXCs, the Commission should again respond to the incidents of discrimination in the provision of billing and collection functions.

LECs Exercise Virtually Unfettered Control over Billing and Collection Functions: As LECs prepare to enter the interexchange markets either through their own operations or through affiliated carriers, they have developed the incentive to undermine the operations of their IXC competitors, and the clearinghouses that serve these IXCs, by denying them access to vital billing and collection information. LECs control access to billing name and address and other critical billing and collection information, meaning that they can dictate the terms of access if the clearinghouse or IXC needs to bill and collect for a non-subscribed call. Even in the case of presubscribed calls, LECs are in the optimal position to issue a single bill to end users, and can use this market position to mandate concessions from IXCs who cannot afford the capital investment necessary to develop their own billing and collection systems.

Immediate and Longer-Term Relief: Given the LECs' incentives and ability to undermine the operations of IXCs and the clearinghouses that serve these IXCs, the Commission should act now to remedy the LECs' abuse of their power over billing and collection functions. As a first step, the Commission should promulgate a rule guaranteeing that non-affiliated IXCs and clearinghouses have access to LEC billing and collection functions on the same nondiscriminatory terms and conditions as the LEC itself or its interLATA affiliate. Ultimately, the Commission should promote the development -- through collaborative industry workshops -- of an independent informational database that will eliminate the LECs' bottleneck control over essential billing and collection information.

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MCI Telecommunications Corporation	)	RM 9108
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Billing and Collection Services Provided By Local Exchange Carriers for Non-Subscribed Interexchange Services	)	

JOINT COMMENTS OF
OAN SERVICES, INC. AND INTEGRETEL, INCORPORATED

OAN Services, Inc. ("OAN") and Integretel, Incorporated ("Integretel") (collectively, the "Joint Commenters"), by undersigned counsel, hereby submit their Comments in support of the Petition for Rulemaking ("Petition") filed by MCI Telecommunications Corporation ("MCI") on May 19, 1997 in the above-referenced proceeding.

OAN and Integretel are billing and collection clearinghouses that specialize in billing calls for smaller carriers and telecommunications providers in the local exchange envelope. Each clearinghouse has billing and collection contracts established with all of the Bell Operating Companies ("BOCs"), GTE, and most independent incumbent local exchange carriers (collectively "LECs") throughout the United States and Canada. These contracts allow OAN and Integretel to reach approximately 98% of lines in the United States to bill and collect for both casual and presubscribed usage. Over five hundred small to mid-sized companies -- many of them start-up providers -- currently utilize the services of OAN and Integretel.

As clearinghouses that primarily provide billing and collection services to interexchange carriers ("IXCs"), the Joint Commenters have a vested interest in the outcome of this proceeding.

Clearinghouses depend upon fair contracts and quality service from the LECs to in turn provide consolidated billing and collection services to their IXC customers. The Joint Commenters concur with MCI in its assessment that the LECs' "take it or leave it" negotiating positions and the unfair contract provisions that have developed as a result of these negotiations threaten the billing and collection process as it now operates. These strong-arm tactics of the LECs undermine the ability of clearinghouses to bill and collect for their IXC customers, and ultimately, these IXCs suffer from higher rates and uncollectible amounts. The Federal Communications Commission ("Commission") must respond immediately to the LECs' treatment of clearinghouses and IXCs by acting in the context of MCI's Petition to ensure that LECs provide billing and collection services for both non-subscribed *and presubscribed* calls on an adequate and nondiscriminatory basis.

I. THE COMMISSION HAS JURISDICTION TO ADDRESS DISCRIMINATION IN THE PROVISION OF ACCESS TO BILLING AND COLLECTION FUNCTIONS.

In 1986, the Commission deregulated billing and collection services provided by LECs.[1] Specifically, the Commission determined that "billing and collections for a communications service that the LEC offers individually or as a joint offering with other carriers is an incidental part of a communication service." *Id.* at ¶31. The Commission further distinguished billing and collection for the offering of another unaffiliated carrier, finding that such service "is not a communication service for purposes of Title II of the Communications Act." *Id.* at ¶33. The Commission noted that it retained ancillary jurisdiction under Title I to regulate billing and collection to IXCs, but declined to exercise jurisdiction at that time. *Id.* at ¶¶35, 37.

Since 1986, the Commission has found several occasions to exercise jurisdiction over billing

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1 *Detariffing of Billing and Collection Services*, 102 FCC 2d 1150 (1986).

and collection matters. In 1993, for example, the Commission found that the provision of billing name and address ("BNA") information by LECs is a communications common service subject to the Commission's Title II jurisdiction.[2] More recently, the Commission has clarified that provision of a customer's BNA information to its presubscribed carrier is required by its "equal access rules."[3] Thus, despite the 1986 deregulation of billing and collection services, the Commission has shown the willingness and the ability to address perceived incidents of discrimination in the provision of billing and collection functions as circumstances dictate. In light of the changed competitive conditions identified below and recent efforts by LECs to leverage their power over billing and collection functions to enter the long distance market, the Commission should now respond by exercising its jurisdiction again and extending the nondiscrimination principles it promulgated in the 1993 and 1996 rulemakings to all billing and collection services.

II. LECS HAVE THE INCENTIVE AND THE ABILITY TO EXERCISE VIRTUALLY UNFETTERED CONTROL OVER BILLING AND COLLECTION FUNCTIONS.

As LECs prepare to enter the interexchange markets within and without their service regions, they have developed the incentive to discriminate against their now-competitor IXCs. GTE, Rochester Telephone Company, and Southern New England Telephone Company ("SNET") already have begun providing interexchange services. The BOCs have done likewise in out-of-region interexchange markets, and they are actively pursuing authority to provide in-region, interexchange

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[2] *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115, Second Report and Order, 8 FCC Rcd 4478, 4481, at ¶16 (1993).

[3] *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115, Third Order on Reconsideration, 11 FCC Rcd 6835, 6857, at ¶40 (1996).

services. As a result, these companies have a clear incentive to subvert the operations of their IXC competitors by denying them access to valuable customer data and increasing the number of uncollectible calls.

Because clearinghouses provide billing and collection services for these potential IXC competitors, they too feel the brunt of the LECs' anticompetitive behavior. Evidence of this can be seen in the "take it or leave it" negotiating policy that LECs have taken with clearinghouses in recent months. The adoption of such a policy is possible because of the level of control LECs exercise over billing and collection functions. Only the LECs have access to the necessary customer BNA and other essential information to bill and collect for non-subscribed interexchange services. Since the clearinghouse only knows the telephone number of the billed party from the IXC, and that individual has no pre-existing relationship with the IXC, the clearinghouse must look to the LEC for BNA information relating to that call.

Even in the case of presubscribed calls, LECs have significant bargaining power because it is impractical in most cases for clearinghouses and IXCs to obtain billing and collection functions from any other source. Specifically, the costs of rendering separate long distance bills are too great, particularly for many of the smaller IXCs that operate on a narrow margin.[4] Indeed, the costs of preparing such bills -- which would include significant initial capital investment to develop a billing and collection system, as well as recurring costs associated with bill production and collection -- would deter many smaller IXCs from even commencing operations. Such a development would

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[4] This is particularly true if an IXC has a substantial number of customers who on average make only low to moderate use of interexchange services. Such IXCs would be forced to incur the loss of issuing bills to such low-revenue customers, or they would be required to impose a surcharge on these customers to cover billing costs.

contravene Section 257 of the Telecommunications Act of 1996 ("1996 Act"), which is aimed at identifying and eliminating "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services . . . ."[5] Moreover, the ability to combine local and long distance calling accounts on a single bill is essential to IXCs and clearinghouses in order to respond appropriately to clear customer preferences. AT&T, for example, has determined that 56 percent of the customers that left AT&T for SNET in Connecticut did so because they wanted a single bill.[6] At the Commission's recent public forum on LEC billing, AT&T also cited a 1996 Yankee Group study showing that 80 percent of consumers prefer a single bill for telecommunications services. *Id.* IXCs and clearinghouses cannot ignore these customer demands and hope to succeed in the market, particularly when LEC interLATA services can and will be combined with local service on a single bill.

Because the smaller IXCs that form the Joint Commenters' customer base depend upon the LEC in such a manner to reach customers for billing and collection purposes, the LECs can take advantage of this dependence by adopting strong-arm negotiating tactics that leave the clearinghouses with no choice but to accept contracts on the LECs' terms.[7] LECs can thereby inject

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[5] 47 U.S.C. § 257(a) (1996).

[6] Transcript, Federal Communications Commission Public Forum on Local Exchange Carrier Billing for Other Businesses, at 15, lines 8-17 (June 24, 1997) ("Transcript").

[7] For example, if OAN were to refuse to accept terms proposed by a LEC, that LEC could then simply refuse to enter into a contract with OAN altogether. In turn, those IXCs who have arranged to receive billing and collection services from OAN would be forced to seek out another clearinghouse that does have a billing and collection contract with that LEC if they want to bill and collect from callers in the LEC's service territory. Thus, the LEC's bargaining power is in fact twofold: the LEC can impose onerous conditions on clearinghouses and the IXCs who depend upon them for billing and collection functions, and the LEC can also pick "winners and losers" from

higher prices and onerous conditions into billing and collection contracts with clearinghouses, with the price and quality of the service received by the IXC customer ultimately suffering as well.

Several examples of recent actions by LECs in the context of billing and collection negotiations may help the Commission to recognize the implications of the unfettered control that LECs are attempting to exercise over clearinghouses and IXCs. The Joint Commenters have encountered one LEC that will not enter into billing and collection contracts unless it also performs customer service responsibilities under the contract. Such a contract provision would allow the LEC to administer day-to-day contact with the IXC's customer, leaving the clearinghouse and the IXC with little, if any, control over matters such as awarding of refunds and timeliness of responses. The clearinghouse and the IXCs should not be compelled to cede control of daily interaction with their customers simply to obtain billing and collection functionalities from the LEC.

Another example of a LEC abusing its control over billing and collection functions involves GTE's recent decision to incorporate an "excessive complaint surcharge" in all of its billing and collection contracts.[8] GTE has indicated that it "has asked most of our current [billing and collection] customers to sign a modified contract in order to allow us to incorporate the excessive complaint surcharge language." *Id.* at 123, lines 13-15. If customers refuse to modify the contract, GTE states, "where we are legally allowed to do so, we are in the process of terminating those contracts." *Id.* at 124, lines 4-7.

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among the clearinghouses, further forcing clearinghouses to accept the burdensome terms proposed by the LEC.

[8] Transcript, at 122, lines 9-12. This surcharge assesses a fixed dollar amount that GTE will collect from the other party to the contract for each complaint above a threshold number.

Given the need that clearinghouses and IXCs have for the billing and collection functions provided by the LEC, these parties ultimately have no choice but to agree to the surcharge language. Yet this supposedly consumer-oriented surcharge raises several concerns that the Commission should investigate more closely. First, it is unclear whether there is any cost basis for the surcharge imposed by GTE. GTE should not be allowed to impose excessive and extraneous surcharges into a contract under any guise. Moreover, GTE's surcharge policy is patently unfair to clearinghouses and their IXC customers. Each clearinghouse interacts with GTE on the basis of a single contract, yet a great number of IXCs could be covered under that contract. No one IXC may have reached the threshold at which the surcharge takes effect, and yet because their accounts are aggregated under the clearinghouse's contract, their combined number of complaints will be used to determine when the surcharge takes effect. GTE's system therefore imposes penalties on IXCs who would otherwise have not been subject to the surcharge.

Finally, and most significantly, the Commission should ask what authority GTE has to impose this surcharge in the first instance. It is the responsibility of this Commission and the various state commissions to receive, determine the validity of, and eventually address consumer complaints. GTE is not a neutral arbiter of complaints by consumers; it has no incentive to investigate whether a complaint against an IXC is valid or fraudulent. In fact, it is profitable for GTE to assume that the complaint is true, and collect the surcharge from the clearinghouse under any circumstances. Given these perverse incentives and the clear ability to discriminate, LECs should not be permitted to police the billing and collection process by imposing onerous conditions on clearinghouses and IXCs. Although the Joint Commenters agree that there is a need for regulation of the billing and collection process that is fair to consumers and carriers alike, the Joint Commenters believe that such regulation should be in the hands of the regulators, and not in the hands of their competitors.

III. THE COMMISSION MUST CONSIDER BOTH IMMEDIATE AND LONGER-TERM RELIEF TO ADDRESS THE IMPROPER EXERCISE OF CONTROL OVER BILLING AND COLLECTION FUNCTIONS BY LECS.

Given the LECs' incentives and clear ability to undermine IXCs and clearinghouses in the provision of billing and collection services, it is inappropriate to allow the LECs to control and police billing and collection operations. As discussed above, LECs have the incentive and the ability to impose onerous conditions in billing and collection contracts, or even to cease providing billing and collection functions to clearinghouses and non-affiliated IXCs altogether. The Joint Commenters therefore join MCI in urging the Commission to take several steps to address this improper exercise of control by the LECs.

The fundamental step that the Commission must take in addressing the LEC's control over billing and collection functions is to investigate instances of improper exercises of control, and as MCI states, "to craft an appropriate nondiscrimination rule that can be equally applied to LEC and CLEC provision of billing and collection services offered to providers of interexchange services . . . ."[9] However, the Commission should go beyond MCI's suggestion that this rule be limited in application to non-subscribed services offered by IXCs. As noted above, LECs wield a significant amount of power in providing billing and collection functions for presubscribed services as well. Only a comprehensive rule requiring nondiscriminatory access to billing functions for both non-subscribed and presubscribed services will begin to address the LECs' exercise of virtually unfettered control over these functions.

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[9] Petition, at ii.

A nondiscrimination rule is only a transitional step toward reducing improper control and policing of billing and collection functions by LECs. So long as the LECs have bottleneck control of BNA and other essential billing and collection information, they will have the incentive and the ability to make access to that information available on only the most onerous, one-sided terms. Without equal access to this information, clearinghouses and IXCs are at the mercy of LECs in attempting to bill and collect for non-subscribed calls, particularly in light of the growth in competition in the local exchange market. When a non-subscribed call is terminated on an LEC's network, the clearinghouse cannot determine whether the ultimate recipient is a customer of the LEC or a reseller CLEC. Accordingly, when the clearinghouse attempts to bill the LEC for such a call, it often receives an error message indicating that the call is unbillable, with no information indicating to which LEC the bill should be addressed. In the end, the IXCs are forced to write these calls off as uncollectible, and indeed, OAN has had one customer file for bankruptcy at least in part because of the volume of uncollectible calls of this nature.[10]

The optimal solution for this problem is to remove the LECs' bottleneck control over BNA and other essential billing and collection information. The Joint Commenters contend that this Commission has the jurisdiction to initiate a process by which an independent database can be established for the sharing of BNA and other billing and collection information among incumbent LECs, CLECs, IXCs, and clearinghouses. Specifically, Section 256 of the 1996 Act permits the Commission:

> to promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to

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[10] *See* Transcript, at 43, line 17, through 46, line 5.

> public telecommunications networks . . . through coordinated public telecommunications network planning and design . . .; . . . and to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.[11]

A collaborative effort involving industry workshops and consultation with state and federal regulators through the Ordering and Billing Forum is likely to be the best manner to design this database. The workshops could discuss critical issues such as what exact information the database should contain, how parties may obtain nondiscriminatory access to the database, how the costs of such a database should be recovered, and whether the database should be established within individual exchanges or on a regional basis. By eventually establishing an effective database for access to BNA and other essential billing and collection information, the ability of LECs to discriminate in the provision of this information is eliminated, and the Commission will have guaranteed that all carriers have nondiscriminatory access to this information as needed.

IV. CONCLUSION

The recent negotiating strategies employed by the LECs undermine the ability of clearinghouses to provide consolidated billing and collection services for their IXC customers. For both non-subscribed and presubscribed calls, LECs hold a central position (through their access to

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[11] 47 U.S.C. § 256(a)(1) and (2) (1996). This Commission has previously stated, "Federal agencies, in the absence of specific statutory prohibitions, have authority to require concerted action on the part of private entities subject to their regulatory authority if this concerted action is necessary or appropriate to further the statutorily established goals and functions of the agencies." *MTS and WATS Market Structure,* CC Docket No. 78-72, Phase III, Notice of Proposed Rulemaking, 94 F.C.C. 2d 292, 314, at ¶50 (1983). The Commission has cited a number of additional statutory sources from the Communications Act of 1934, including Sections 1, 4(i), 201(a), and 214, for the proposition that it has authority to require joint planning by entities under its jurisdiction. *Id.*, at 316, ¶51.

BNA information and their ability to provide a single bill) that allows them to dictate the terms of billing and collection contracts. By denying clearinghouses and IXCs access to valuable customer data, increasing the number of uncollectible calls, and adopting "take it or leave it" negotiating positions, the LECs ultimately increase the operating costs for the IXCs -- many of whom operate on a narrow margin and rely on effective billing and collection to sustain their operations from month-to-month. These actions merit immediate Commission investigation and the promulgation of a rule to ensure that LECs do not favor their own interLATA operations in providing access to billing and collection functionalities. In addition, the Commission should work with state and local regulators and industry working groups to establish an independent information database that will eventually guarantee all parties nondiscriminatory access to all the information they need to bill and collect for non-subscribed telecommunications services.

Respectfully submitted,

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